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(iii) If the veteran has no entitlement under 38 U.S.C. chapter 34, the monthly rate stated in § 21.7136 (a) or (b), as appropriate, and the increase provided in § 21.7136(d), (f), or (g), if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by § 21.7136(d) or § 21.7137(b), as appropriate, plus the monthly rate stated in § 21.7138(c) if the veteran is entitled to supplemental educational assistance.

(Authority: 38 U.S.C. 3034, 3482(g))

(f) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires non-veterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due.

(Authority: 38 U.S.C. 3034, 3686(a)(2))

(g) *Failure to work sufficient hours of apprenticeship and other on-job training.*

(1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(3), and (d)(4), and 21.7137(a)(2) and (d)(2); and

(ii) Any increase (“kicker”) set by the Secretary of the military department concerned as described in §§ 21.7136(g) and 21.7137(e).

(2) In making the computations required by paragraph (g)(1) of this sec-

tion, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph “hours worked” include only—

(i) The training hours the veteran worked, and

(ii) All hours of the veteran’s related training which occurred during the standard workweek and for which the veteran received wages. (See § 21.4270(c), footnote 5, as to the requirements for full-time training.)

(Authority: 38 U.S.C. 3034, 3687(b)(3))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 15025, Apr. 24, 1992; 58 FR 26242, May 3, 1993; 60 FR 32272, June 21, 1995; 62 FR 55520, Oct. 27, 1997]

§ 21.7140 Certifications and release of payments.

(a) *Advance payments and lump-sum payments.* VA will apply the provisions of § 21.4138(a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3034 and 3680)

(b) *Accelerated payments.* VA will apply the provisions of §§ 21.7151(a), (c), and 21.7154(d) in making accelerated payments.

(c) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training, a correspondence course, one who qualifies for advance payment, one who qualifies for an accelerated payment, or one who qualifies for a lump sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in § 21.7152; and

(ii) VA has received from the individual a verification of the enrollment.

(Authority: 38 U.S.C. 3680(g))

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

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(i) The training establishment has certified his or her enrollment in the training program as provided in §21.7152; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after-

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

(Authority: 38 U.S.C. 3034, 3680(b))

(d) *Payment for intervals between terms.* (1) In administering 38 U.S.C. chapter 30, VA will apply the provisions of §21.4138(f) when determining whether a veteran is entitled to payment for an interval between terms. References to §21.4205 in §21.4138(f) shall be deemed to refer to §21.7136.

(2) The Director of the VA facility of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.

(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(ii) An educational institution, which disagrees with a decision made under this paragraph by a Director of a VA

facility, has one year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA facility where the decision was made. The Director, Education Service, shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Education Service, has the authority either to affirm or reverse a decision of the Director of a VA facility.

(3) A veteran, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved educational institution to another for the purpose of enrolling in, and pursuing, a similar course at the second educational institution. If the interval between terms does not exceed 30 days, VA shall, for the purpose of paying educational assistance, consider the veteran to be enrolled in the first educational institution during the interval.

(Authority: 38 U.S.C. 3034, 3680)

(e) *Payee.* (1) VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §21.4146 to 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034, 3680)

(f) *Limitations on payments.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034, 3680)

(g) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the servicemember's or veteran's death is

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payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 15025, Apr. 24, 1992; 61 FR 26117, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 52652, Sept. 30, 1999; 68 FR 35180, June 12, 2003]

§ 21.7141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill - Active Duty may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3019, 3492)

[61 FR 26117, May 24, 1996]

§ 21.7142 Accelerated payments.

The accelerated payment will be the lesser of—

(a) The amount equal to 60 percent of the charged tuition and fees for the term, quarter or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(b) The aggregate amount of basic education assistance to which the individual remains entitled under this chapter at the time of the payment.

(Authority: 38 U.S.C. 3014A)

[68 FR 35180, June 12, 2003]

§ 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. chapter 34, who establishes entitlement under 38 U.S.C. chapter 30, shall not be eligible to receive educational assistance under 38 U.S.C. chapter 30 before January 1, 1990. An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for the program of education he or she wishes to pursue. The provisions of law are:

(1) 38 U.S.C. chapter 31,

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(2) 38 U.S.C. chapter 32,

(3) 38 U.S.C. chapter 35,

(4) 10 U.S.C. chapter 1606,

(5) 10 U.S.C. chapter 107,

(6) The Hostage Relief Act of 1980, (Pub. L. 96–499, 94 Stat. 1967–1974, and 5 U.S.C. 5561 note), and

(7) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399, 100 Stat. 887–889 (10 U.S.C. 2181–2185)).

(Authority: 38 U.S.C. 3033, 3681)

(b) *Election of benefits.* The veteran must elect in writing which benefit he or she wishes to receive. The veteran may make a new election at any time, but may not elect more than once in a calendar month.

(Authority: 38 U.S.C. 3033; Pub. L. 98–525)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034, 3681)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28389, July 11, 1990; 57 FR 15025, Apr. 24, 1992; 58 FR 46867, Sept. 3, 1993; 61 FR 20729, May 8, 1996. Redesignated at 68 FR 35180.]

§ 21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4008. See § 21.7133.

(Authority: 38 U.S.C. 3034, 3690(b))

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.